

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)

Petition for Declaratory Ruling and)
Request for Expedited Action on the)
July 15, 1997 Order of the Pennsylvania)
Public Utility Commission Regarding)
Area Codes 412, 610, 215, and 717)

NSD File No. L-97-42

Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 96-98

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The United States Telephone Association (USTA) hereby files its opposition to the Petitions for Reconsideration and/or Clarification of the California Public Utilities Commission and the People of the State of California (California), the Colorado Public Utilities Commission (Colorado), the Connecticut Department of Public Utility Control (Connecticut), the Maine Public Utilities Commission (Maine), the Massachusetts Department of Telecommunications and Energy (Massachusetts), the National Association of Regulatory Utility Commissioners (NARUC), the New Hampshire Public Utilities Commission (New Hampshire), and the Pennsylvania Public Utility Commission (Pennsylvania), (collectively referred to as "the Petitions" or "the State Petitions") seeking relief from the Commission's Memorandum Opinion and Order and Order on Reconsideration in the above-captioned proceeding (Order).¹

¹64 Fed. Reg. 3104 (1999).

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Conversely, USTA supports the Petition for Reconsideration filed by SBC Communications, Inc.

USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the exchange carrier-provided access lines in the United States and they are directly affected by the Commission's Order in this proceeding.

USTA addresses in particular three specific areas which the state petitions have asked for relief from elements of the Order. They are code rationing, rate center consolidation, and prevention of assignment of codes to unqualified entities and reclamation of codes from users not qualified to hold them or not using them. Each of these requests should be denied for the reasons stated below.

I. Code Rationing

The state petitioners ask for reconsideration of various elements of the Order, the most fundamental of which is the requirement that "A state commission may order rationing only if it has ordered relief and established an implementation date, and the industry is unable to agree on a rationing plan."² USTA opposes these requests. The Commission has developed a very clear construct for the orderly process of administration of numbering resources in the United States. This requirement is an essential part of that process and it must be upheld. The arguments petitioners make in support of overturning this requirement demonstrate that the requirement must not be modified.

For example, California is distressed about "the impact on the public of the ever-

²Order at ¶ 25.

increasing rate of implementing NPA relief."³ Pennsylvania states that "The PAPUC should have the authority to protect Pennsylvania consumers and small businesses from the costs of an additional area code if a new code is not truly necessary and could be avoided through conservation measures."⁴ Maine states that "The ability to ration codes and engage in other conservation measures before deciding whether and when an additional code should be implemented is essential to states' abilities to ensure that ratepayers are not unduly burdened by improper use of public numbering resources."⁵

The state petitioners are trying to intervene and affect the well-defined national structure for number administration and NPA relief planning.⁶ This construct has its foundation in Section 251(e)(1) of the Communications Act of 1934, as amended, (the Act),⁷ which gives the Commission exclusive jurisdiction over the North American Numbering Plan (NANP) that applies to the United States. The Act also directs the Commission to create or designate one or more impartial entities to administer numbering and to make such numbers available on an equitable basis.

³California at 7.

⁴Pennsylvania at 7.

⁵Maine at 3.

⁶Several states are following the provisions of the Order for area code relief. These efforts have yielded positive results and provide evidence that petitioners' requests need not be granted.

⁷47 U.S.C. § 251(e)(1).

In the Second Report and Order in CC Docket No. 96-98,⁸ the Commission delegated limited authority to states that requested such authority to conduct those functions associated with initiating and planning area code relief in addition to the adoption of final area code relief plans.⁹ However, the Commission retained authority to set policy with respect to all facets of numbering administration¹⁰ and specifically retained jurisdiction over NXX code allocation and assignment. The functions of allocation and assignment of codes were centralized in the North American Numbering Plan Administrator (NANPA), with the Commission stating that a uniform, nationwide system of numbering is essential to the efficient delivery of services.¹¹ Under this structure, the conduct of relief planning in the United States is generally governed by industry procedures developed by the Industry Numbering Committee.¹²

In the Order, the Commission further addressed this issue and again emphasized that the jurisdiction of the states needed to be restricted. The Commission did, however, on its own motion, further delegate a limited amount of authority to state commissions to allow them to assure the availability of numbering resources and to protect the interests of consumers.

⁸Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (Second Report and Order).

⁹*Id.* at 19532. There, the Commission determined that states that wanted to conduct the planning process could do so. The Commission required such states to identify themselves, and the only one that did was Ohio.

¹⁰*Id.* at 19512.

¹¹*Id.* at 19533.

¹²*NPA Code Relief Planning & Notification Guidelines*, INC 97-0404-016, reissued July 13, 1998 (NPA Guidelines).

Specifically, the Commission ruled that a state commission may order NXX rationing only if it has ordered area code relief and established an implementation date and the industry is unable to agree on a rationing plan.¹³ The Commission made clear that a state commission may not impose a rationing plan without meeting these conditions nor for the sole purpose of avoiding a decision on area code relief.

The state petitioners now seek to overturn the Commission's determination and allow them to utilize such actions as number rationing, number pooling, or other optimization measures absent complying with Commission-prescribed procedures and industry guidelines which constitute code relief. These attempts should be rejected.

USTA is aware of the tremendous pressures upon the states due to the enormous demands on numbering resources. While USTA is also concerned about the burdens placed on consumers of telecommunications services, we are likewise concerned that the effect of the conservation measures such as rationing advocated by the states is to prevent service providers from having access to the numbering resources they need in order to provide services. The objective of the Telecommunications Act of 1996 was to provide consumers with choices of telecommunications services, not to choke the availability of an essential resource to the provision of service. Any scarce resource can be made to last any length of time depending on how draconian the rationing measures are. As a result of actions (or lack of timely actions) jeopardy has been declared in many areas and rationing measures have been implemented. In these areas, the scarcity of numbering resources has resulted in allocation, lotteries and held service orders. USTA believes

¹³See Order at ¶¶ 23-25.

that adequate procedures are available for the orderly planning for relief. However, the successful application of these relief planning procedures has been prevented by the state commissions' grasping for straws in a desperate attempt to forestall relief.

The Commission has properly determined that a nationwide framework for number administration and code relief is necessary. The wisdom of the Commission's Order is apparent. The Commission has provided the states with the opportunity to determine the method of relief that will be provided when the forecasts indicate that relief is needed.¹⁴ The existing process provides the state commissions with an opportunity to exercise judgment as to the type of relief that is most appropriate in a given situation. The state commissions are provided the opportunity to participate in the process of developing plans for conservation only in a jeopardy situation¹⁵ and once the plan has been made, which includes the type of relief to be applied and a date for its implementation.¹⁶ The ability of a state to order rationing is available only if it has met its responsibility in approving a plan, and the industry is unable to agree on a rationing plan.¹⁷ The Order is complementary to the existing industry relief planning process. This structure is sound and should be sustained. A grant of the state petitioners' requests would undermine this structure

¹⁴See n. 9, *infra*.

¹⁵A jeopardy condition exists when the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief.

¹⁶"At that point, a state commission may work in partnership with the NXX code administrator to devise an NXX rationing plan base on whatever mechanisms the state commission and the NXX code administrator determine are most appropriate...." Order at ¶ 24.

¹⁷*Id.* at ¶ 25.

and destroy the distinction between number administration and NPA relief planning.

The petitioners raise an issue that centers around planning for area code relief and assuring that procedures adequately reflect the Commission's determinations in industry practices relating to NXX code relief and planning. The states' remedy is for the Commission to give them more jurisdiction to impose rationing without a plan for relief in place. This is unacceptable. Adding to the futility of searching for short term relief is the fact that the impact of various conservation measures are not clearly known, and vary in different circumstances.¹⁸ This makes the process of delaying relief while waiting the outcome of various rationing conditions serve only to constrain provision of telecommunications services due to the lack of numbering resources. The pressure to delay effective relief has the effect of providing a motivation to tighten the conditions of rationing to completely unacceptable levels. It is essential that the Commission not further delegate authority to the states and undermine the construct that is in place.

The Order was a significant step in bringing clarification and understanding of procedures and process to this environment. Many of the elements of the state petitions would have the effect of overturning the advances embodied in the Order. One of the outcomes of this proceeding should be clear and unambiguous understanding of the various processes and procedures that are defined in the Order and contained in the industry's own procedures. The framework set forth in Appendix A, hereto, will serve to enhance the clarity of the requirements

¹⁸The industry through a working group of the NANC has addressed various optimization methods. See *North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, September 23, 1998.

of the Order and to clearly establish their relationship to procedures which are now available to the industry.

II. RATE CENTER CONSOLIDATION

Some petitioners¹⁹ requested that existing activities of the state commissions not be disturbed – among them is rate center consolidation. USTA considers rate center consolidation to be among those measures that states are free to take in cooperation with their serving carriers so long as it is an ongoing and long term number optimization activity. Such activities in support of long term number optimization need not be disturbed by the Commission's Order. USTA asserts that rate center consolidation cannot be used as a substitute for area code relief as some of the petitions requested. The requests to engage in rate center consolidation as a relief measure should be denied.

III. PREVENTION OF ASSIGNMENT OF CODES TO UNQUALIFIED ENTITIES AND RELCLAMATION OF CODES FROM USERS NOT QUALIFIED TO HOLD THEM OR NOT USING THEM

Some petitioners²⁰ argue that the state commissions should be able to prevent assignment of NXX codes to entities not qualified to have them and to order return of codes that have been assigned to entities not qualified for the assignments or in situations where the codes are not used.

USTA submits that sufficient provisions to control this problem exist in the current NXX

¹⁹California at 21, Pennsylvania at 7.

²⁰Connecticut at 5, Maine at 6, NARUC at 5, New Hampshire at 7, Pennsylvania at 8.

assignment rules that have been developed by the INC.²¹ The code administrator has the responsibility to issue codes only to entities qualified to hold those assignments and to recover codes not properly assigned or which are not utilized. There is every opportunity for the state commissions to work in cooperation with the code administrators through such activities as information sharing to provide timely information on the status of carrier certification and other measures under the purview of the state commissions so that the administrator has access to full and complete information necessary to properly discharge the obligations of administration.

If the state commissions were to have direct authority to negate or control assignments, both the state and the administrator would have responsibility for some of the same activities. This could lead to interference between the two activities and significant confusion. Furthermore, in this case, the administrator's authority is clearly superior. Pursuant to Section 251 of the Act, the FCC sought to replace the earlier environment in which there were multiple administrators with a single administrator acting on authority traceable directly to the FCC.²² To grant the states' petitions in this matter would be to establish as many as 51 additional separate authorities sharing in administration responsibility with the national administrator, which is clearly not a result intended by the current construct. In this case, even considering the large numbers of different states, the situation would be even more complex – in the previous environment, at least there was but a single administrator in each area.

Any state commission that is aggrieved by the actions of the administrator has the option

²¹*Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, reissued September 18, 1998.

²²CC Docket No. 92-237.

to petition the FCC to compel the administrator to comply with the responsibilities which it is required to carry out. This should provide adequate protection for the concerns raised by petitioners.

IV. Conclusion

For the reasons stated above, the Commission should deny the petitions for reconsideration and/or clarification filed by the states that seek additional authority to order such measures as rationing absent adoption of an area code relief plan, establishment of an implementation date and lack of industry agreement for a rationing plan. USTA urges the Commission to give serious consideration to the process of planning for and implementing NPA relief set forth in Appendix A. Furthermore, the Commission should deny those petitions that seek to use rate center consolidation as a substitute for area code relief and seek authority to prevent assignment of NXX codes to entities not qualified to have them and to order return of codes that have been assigned to entities not qualified or where the codes are not used.

Respectfully submitted,

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APPENDIX A

THE PROCESS OF PLANNING FOR AND IMPLEMENTING NPA RELIEF

A view based on the Commission Order and existing NPA relief guidelines

Planning for Relief

The guidelines for NPA relief planning¹ recommend that planning for exhaust should begin 5 to 10 years before projected exhaust. In order to know when this will occur, the North American Numbering Plan Administrator (NANPA)² must keep a continuous estimate of the exhaust dates for all NPAs in the US. This is accomplished by compiling information obtained in the Central Office Code Utilization Survey (COCUS).³

Planning for relief can and should be an ongoing process, especially in areas where rapidly changing patterns of code usage have been experienced. The fact that jeopardy has been declared in so many areas is evidence that planning for exhaust has not been conducted effectively.

Development of a Relief Plan

USTA believes that a relief plan must be adopted by the appropriate regulatory body at

¹ *NPA Code Relief Planning & Notification Guidelines*, INC 97-0404-016, at 6, ¶ 5.0, reissued July 13, 1998 (NPA Guidelines).

² The CIS division of Lockheed Martin is currently the administrator of the NANP.

³ The North American Numbering Council and its working groups are currently determining what level of information gathering will be utilized. COCUS is the term used by the previous administrator and is likely to be superseded by the provisions of an expanded analysis activity.

least 20 months⁴ prior to the relief date⁵ projected by the NANPA. This plan will include many elements - among them must be the type of relief (split, overlay or boundary realignment) and the date on which the relief plan is to become effective. If such a plan has not been adopted 20 months prior to the relief date, adoption of a relief plan should become the responsibility of the NANPA with input from the industry. The Commission stated that "If state commissions do not make decisions on area code relief when the forecasts indicate that NXX depletion is imminent, carriers may petition this Commission for relief. The Commission, under its exclusive jurisdiction over numbering, can order the code administrator (which ultimately will be the NANPA) to implement area code relief."⁶

In such a situation, the state commission is in default on its responsibility, and jeopardy may be declared. USTA believes that in such a situation, a condition that will result in a need to ration codes could develop and suggests that the Commission may clarify its intent that the NANPA automatically assume the planning activity. In such a case, time is of the essence. The need to petition the Commission for relief will only delay the process. USTA believes that in such a case, the state commission continues to have the opportunity to participate in the process

⁴ USTA suggests this period as a reasonable amount of lead time that is consistent with the Order and current industry capabilities. (NPA Guidelines, at 7, ¶ 5.8) In most cases, it will take a minimum of 18 months or slightly more to accomplish all of the implementation sequences necessary, and an additional 2 months is needed to permit application of other remedies, as described herein.

⁵ The relief date is the date by which the new NPA is introduced and routing of normal commercial traffic begins. The relief date should precede the exhaust date by 12 months.

⁶ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98-224, at ¶ 26, released September 28, 1998, (Order).

of developing the plan.

The intent of the Order is appropriately to bring an end to interminable delays to this process, and such clarification would assist in achieving this objective. In such a situation, we presume that extensive meetings will have been held and an extensive record will have been generated. Accordingly, the NANPA will not have to develop a new plan, but will have the option to formally accept and make notification of the plan that the industry has agreed to and recommended for implementation. USTA believes that sixty days for NANPA to complete this process is reasonable. Upon disclosure and publication of the relief plan by the NANPA, the plan would be considered adopted and all carriers in the affected area must proceed to complete all actions so that the provisions of the plan are implemented and the effective date is met. The option to petition the Commission for relief should be reserved for situations in which the parties involved have failed to carry out their obligations as specified in the Order, and should not be needed to implement clear obligations stated in that Order.

Demand Experience for Codes after Plan Adoption

Demand for codes after plan adoption refers to ongoing experience in a situation where a relief plan is in effect, and is without regard to whether the plan was adopted by the state commission or determined by the NANPA. If demand for new codes continues in a manner consistent with the projections that were utilized in the relief planning process, there should be no need to ration provision of NXX codes within the NPA at any time up to and including the effective date. If demand for NXX codes should increase to the extent that the projected exhaust date will occur before the relief date in the plan, upon such determination, NANPA will declare

that a jeopardy condition exists. In such a situation, it would be consistent with the Order⁷ for the NXX code administrator and the industry to devise the jeopardy conservation or rationing measures.⁸ If the NXX code administrator and the industry cannot agree on a rationing plan within 60 days of the declaration of jeopardy, the state commission should determine the elements of the plan to be implemented, so long as it is fair, equitable and competitively neutral, in accordance with Section 52.9 of the Commission's rules.⁹

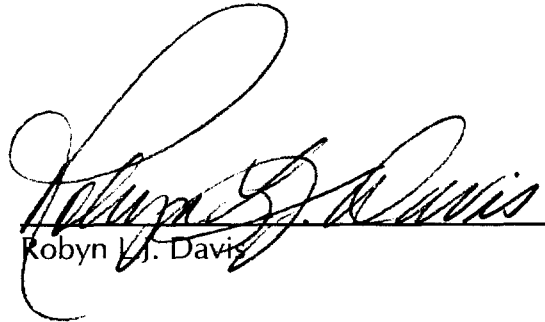
⁷¶ 25.

⁸ It would be logical in such a situation as to provide for the option of modifying the relief plan so that it becomes effective sooner than originally contemplated. While USTA recognizes this possibility, and believes that such action might be appropriate when possible, it seems that any practical jeopardy situation must not anticipate rescue from this quarter.

⁹47 C.F.R. § 52.9.

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on February 4, 1999 copies of the Opposition to Petitions for Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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